

(17,482.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 368.

THE BIENVILLE WATER SUPPLY COMPANY, APPELLANT,

vs.

THE CITY OF MOBILE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ALABAMA.

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Bill of Complaint.

Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama. In Equity. No. 210.

To the honorable the judge of the United States circuit court in and for the southern district of Alabama :

The bill of complaint of The Bienville Water Supply Company, a corporation incorporated by the legislature of the State of Alabama and having its home office in the city of Mobile, against The City of Mobile, a municipal corporation chartered by the legislature of the State of Alabama, and against John Curtis Bush, as mayor of said city, respectfully shows unto your honor :

First. That complainant is a corporation chartered by the General Assembly of the State of Alabama, with its offices and place of business and situs in said city of Mobile. It was so chartered for the purpose, among others, of supplying water to the defendant The City of Mobile, known as the port of Mobile at the time of such incorporation, and to the inhabitants thereof. By the provisions of the act incorporating said complainant it is made obligatory upon it to supply water to Mobile and its inhabitants, in that the following language is used in its charter, to wit: "That said corporation is hereby charged with the duty of introducing into the port of Mobile * * * such supply of pure water as the domestic, sanitary, and municipal wants thereof may require, and for this purpose said corporation is hereby authorized to construct all needed canals and ditches and by pipes and aqueducts as may be best suited for the purpose," &c. This was and is a continuous obligation on said corporation under its charter, and the refusal to comply with such obligation would work a forfeiture of its rights and franchises.

2 Second. In the execution of such purpose complainant laid mains and pipes in the streets of Mobile and established hydrants and fire-plugs therein, and built a large reservoir and erected pumps outside of the city of Mobile connecting with such mains and pipes at a large expense to it, to wit, of about \$800,000. Said property is now in use by it for the purpose of supplying said city and its inhabitants with water, which it is now doing. The city of Mobile is a municipal corporation chartered by the General Assembly of the State of Alabama, and John Curtis Bush is the mayor thereof, an officer created by said charter.

Third. On the 15th day of August, 1888, The Bienville Water Supply Company, this complainant, entered into a contract with the city of Mobile to supply it and its inhabitants with water at certain fixed rates to be paid by the city, and said contract also fixed the rates for the inhabitants thereof for them to pay for water. At such date said city of Mobile had a previous and in some respects a different charter from the one it is now working under, but with the same corporate name, and the present city government is the

successor of the one making said contract with this complainant, and in all respects bound by its contracts, acts, and doings. A copy of said contract so made by and between the complainant and the city of Mobile is hereto appended and marked Exhibit "A" and made a part of this bill of complaint. On the 14th day of April, 1891, said contract was extended and changed, whereby said contract was extended for a period of 12 years from the 1st day of July, 1888, to wit, until the 1st day of July, 1900, and it is now in full force and effect, and this complainant has been working under said contract ever since the entering into the same, and is still working under it. A copy of said amended and extended contract is hereto annexed, marked Exhibit "B," and made a part of this bill. This

3 complainant has faithfully complied with all of the obligations and requirements on its part of said provisions of said two contracts, and is still complying with them, and is ready and willing to carry out all of such provisions.

Fourth. But said defendant has already violated and is still proceeding further to violate its contract with this complainant, in this, that on the 14th day of May, 1898, said city claimed to have bought out a competing water-works plant, to wit, what is known as the "City water works" or "Stein water works;" has taken possession of said water plant; has employed officers and employees to carry on and run the same, and is now carrying on said "Stein" water-works business, selling water to customers, cutting the rates established by and between said city and this complainant, and actively competing with this complainant for the business of selling and furnishing water, and has taken away some of the water consumers and customers from this complainant, thereby decreasing its income and violating the obligation of its contract with this complainant, against the provisions of the constitution of the State of Alabama and also the provisions of the Constitution of the United States, as set forth in article 1, section 10, of said Constitution of the United States, and this complainant claims that said corporation, the city of Mobile, had no right and no authority after entering into said contracts above named to so impair and violate it as above set forth.

Fifth. In addition to the above acts on the part of the city of Mobile, it is now proceeding to erect and build another system of water works to supply the city of Mobile and its inhabitants with water before the expiration of said contracts, Exhibits "A" and "B" of this bill. It claims that it has a right so to do under the provisions of its charter and an act of the legislature of Alabama approved, to wit, on November 30th, 1898. The only provision of said charter on said subject is found in section 21, and is as follows,

4 to wit: "The general council has also the right to contract for, build, or purchase or otherwise acquire public works, subject to the approval of the majority vote of the citizens of Mobile at a special election called therefor." In July, 1897, said election was held in the city of Mobile and a majority of the votes cast were in favor of said city contracting for, building, purchasing, or otherwise acquiring a system of water works to be owned and operated by the city of Mobile and the issuing of \$500,000 of bonds

of the city of Mobile to pay for the same. Acting under and by virtue of the proceedings hereinbefore set forth and also the powers granted to it by said act of November 30th, 1898, the mayor and general council of said city of Mobile are now actively proceeding to acquire a system of water works and have entered into contracts to have the same built, and the building and construction of the same are now actively going on in the city of Mobile, at the cost of nearly or quite \$500,000, and before the termination of the contracts above named with this complainant. Said mayor and general council have accepted the bid of M. T. Lewman and Company, of Louisville, Kentucky, to construct said system of water works, and said contractors are proceeding actively on such work.

Sixth. Further showing that said city intends to proceed to erect and complete its own water works and to compete with the complainant in furnishing and selling water before the expiration of its contract with complainant, complainant alleges that Sperry, Jones & Co., of Baltimore, Maryland, and the city of Mobile have made a contract and agreement that said Sperry, Jones and Company will take said \$500,000 of the water-works bonds at a price a little above par value, and said Sperry, Jones and Company have already taken and paid for a part of said bonds. The city intends to lay and is already laying its water mains and smaller water pipes to a large extent in the same streets, side by side with those of the complainant, equally accessible to the householder and consumer on each side,

5 with ample sets of hydrants, pumping stations, and all the requisites of supplying water to the inhabitants of Mobile, to thus actively compete with complainant in its business and destroy its revenue, and there will arise such conflict in the exercises of the two businesses and in the two works as will necessarily practically destroy the value of the property of complainant and take away from it its customers and income, while its contract with the city to furnish such customers with water at remunerative prices, and prices fixed by the city, as aforesaid, is still in existence and has not expired. There is no complaint on the part of the city, so far as complainant knows, that it has not an abundant supply of wholesome water for all its contractual obligations, and yet the city is taking such action as above alleged, which will indirectly destroy the income of complainant as fully as if it should cause complainant to quit furnishing water altogether to it and its inhabitants, and complainant charges that such action on the part of the city is as fully impairing the obligation of its contract with complainant as if it should pass an ordinance nullifying and directly breaking said contracts. It has no legal right to destroy the value of complainant's plant by thus duplicating it, as aforesaid, while it is under contractual relations with the city, as shown by Exhibits "A" and "B."

Seventh. Complainant further alleges that it has outstanding \$750,000 of negotiable bonds in the hands of *bona fide* purchasers, secured by a mortgage on its plant and all of its property, rights, and franchises, and that it cannot pay the interest or coupons on said bonds if its income is so decreased, as alleged, by competition

of water works owned by the city, and that it will be greatly damaged and ruined by such competition and cannot pay the interest on its bonds held by *bona fide* holders, and that the city is totally insolvent and cannot respond in damages by any common-law proceeding, and that the only way it can protect itself from heavy loss and damages is by the interposition of this court of equity for its relief as prayed for.

Prayer for Relief.

The premises considered, complainant prays that your honor will decree that the city of Mobile has not the power to contract for, build, purchase, or otherwise run the said Stein or City water works as competitors in business with complainant during the contract existing between the city and this complainant for the supplying the city and the inhabitants thereof with water, or to contract for, build, purchase, or otherwise acquire a system of water works to be owned by said municipal corporation as competitors in business with complainant during the existence of the contract between it and the city of Mobile, and that the defendant The City of Mobile be restrained by the order and injunction of this court from making or carrying out any contracts for supplying water to its inhabitants, or for the construction of said system of water works during the continuance of said contract, and that said defendants be further enjoined from proceeding further to construct or acquire a system of water works to be owned by said city during the continuance of said contract between complainant and the city, and that your honor will decree that said municipal corporation has no authority or power to make any contracts to bring water into the city of Mobile to compete with complainant, or to build or otherwise acquire such water works to so compete with complainant for business and break down its profits during said contract, and that it be enjoined from so doing, and that your honor will further decree that the city of Mobile is without the legal right to build or buy any water works at the present time, and that it be enjoined from so doing, and that your honor will grant unto complainant such other and further or different relief as the nature of the case may require and to your honor may seem meet and proper.

Prayer for Process.

Complainant further prays that the municipal corporation, The City of Mobile, and John Curtis Bush, in his official capacity as mayor of Mobile, be made parties defendant to this bill of complaint, and that the usual writ of subpoena may issue out of this court to each of said defendants, commanding them and each of them to appear in this court and demur to or plead to or answer this bill of complaint, as required by the rules of this court, within the time and under the penalties prescribed by law.

BESTOR AND GRAY,
R. H. CLARKE,

Solicitors for Complainant.

FOOT-NOTE.—Each of the defendants is required to answer each and all of the allegations of the foregoing bill of complaint from paragraph 1 to paragraph 7, inclusive.

BESTOR AND GRAY,
R. H. CLARKE,
Solicitors for Complainant.

STATE OF ALABAMA, }
County of Mobile. }

Personally appeared before me, William J. Young, a notary public in and for the State and county aforesaid, Walter Wood, of The Bienville Water Supply Company, the complainant in the foregoing bill of complaint, who, being by me duly affirmed, deposes and says that he has read said bill of complaint and knows the contents thereof, and that the matters and things therein stated as facts are true, and that he is authorized to make this affidavit.

WALTER WOOD.

Subscribed and affirmed to before me on this 11th day of February, A. D. 1899.

WILLIAM J. YOUNG,
Notary Public, Mobile County, Alabama.

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EXHIBIT "A."

This agreement made and entered into this 15th day of August, in the year 1888, by and between the Bienville Water Supply Company, a corporation chartered by and existing under the laws of the State of Alabama, and the city of Mobile, witnesseth:

1. Said Bienville Water Supply Company agrees and contracts to furnish for the use of the city of Mobile two hundred and sixty (260) double-nozzle fire-hydrants, said hydrants to be of the Ludlow or Mathews pattern, to be maintained, kept in repair and replaced when necessary without additional cost to the said city, and to be located as per map now on file in the office of the Bienville Water Supply Company in the city of Mobile, a copy of which is filed with the city clerk; the city of Mobile being hereby accorded the right to discontinue the use of ten hydrants each year, for a period of three years, on mains as now laid, until the discontinuance of thirty (30) hydrants is affected, and the said water supply company agrees to furnish in place of said thirty discontinued hydrants and as rapidly as they may be discontinued, not exceeding ten (10) in any one year, other hydrants in their places to be located as the general council may determine, either upon mains already in existence or upon mains to be laid without additional cost to the said city, provided such additional mains shall not exceed five hundred feet to any one hydrant, and provided also, this is not to interfere with the city's rights under section five of this contract for hydrants in addition to the 260 upon the conditions named in said section five (5).

2. Said Bienville Water Supply Company further agrees to erect

or cause to be erected in some suitable place to be agreed upon by the general council of said city, a gauge which shall indicate an average pressure of eighty (80) pounds at the hydrant for every
 9 twenty-four hours, failure to maintain such pressure shall abate the price proportionately for the time such failure continues after the expiration of such 24 hours. In addition said water company agrees and guarantees to furnish for fire service during the existence of any fire or conflagration at any time within the city within reach of hydrants through three hundred (300) feet of two and one-half inch ($2\frac{1}{2}$) double leads of hose with one inch nozzle, six vertical streams of eighty feet each; through same hose with one and one-quarter ($1\frac{1}{4}$) inch nozzle six vertical streams sixty feet each. For failure to render this service at any time during such fires or conflagrations said water supply company hereby agrees to forfeit to the said city the sum of one thousand dollars and that thereupon this contract shall immediately cease and terminate; provided, however, that said company shall not be subject to such forfeiture or termination of this contract if by reason of any illegal, unlawful, or improper interference by parties other than said company with the pipes, mains, hydrants, or machinery of said water supply company, it shall be unable to render service. It is further agreed that should said water company by reason of any accident to its pipes, mains or machinery, not the result of negligence on the part of said company, its officers, agents, or employees become unable to render the service contracted for, then said company upon notice to the city authorities, shall have a reasonable time to be agreed upon between said company and said city, in which to make necessary repairs, in which event said water supply company shall abate proportionately the amount agreed upon to be paid under this contract.

3. Said Bienville Water Supply Company further agrees that said city shall have the unrestricted use of said hydrants for fire purposes as well as for the practice of firemen; the free use of water for flushing the gutters of said city, provided, that not more than two hydrants are to be used at any one time, and then only
 10 during daylight and these for this purpose not during a fire; also the free use of water for all municipal buildings, as well as for a fountain in Bienville square, said water to said fountain to be through a one-inch pipe and only to be used during daylight and not on rainy days.

4. Said water supply company further agrees and binds itself not to charge during the continuation of this contract, for domestic uses a greater or higher rate for water than that now established, a schedule of which is herein incorporated and made a part of this agreement, to wit:

Private Families.

One service	\$10.00
Each additional faucet or sink	5.00
Bath-tub	5.00
Stationary wash-tub	1.50

Butler's sinks each	2.00
Kitchen sinks	5.00
Stationary wash-basins	1.00
Automatic pan water-closet	4.00
Hopper water-closet	6.00
Hose sprinkler for lawns and streets, nozzle not to exceed ($\frac{3}{8}$ ") three-eighths of an inch	10.00
Revolving lawn sprinkler, $\frac{1}{8}$ " openings, 6 hours per day.	10.00
Fountains $\frac{1}{8}$ " jet, 6 hours each day, for each month.....	1.00

Larger fountains, special rates.

Hot or cold water flowing into one vessel will be charged as one tap only.

Apartments and tenement-houses, each flat or suite of rooms charged as one dwelling.

Hotels and Boarding-houses.

Each faucet and sink	12.00
11 Each bed-room.....	1.00
Hopper water-closet.....	20.00
Bath-tub.....	12.00
Automatic pan water closet.....	12.00
Automatic urinal.....	5.00

Private Stables.

Each horse, including washing vehicles by hand.....	3.00
Each cow.....	2.00
Stable hose.....	5.00

Livery, Public, and Boarding Stables.

Each stall.....	1.50
Hose for washing, $\frac{1}{8}$ nozzle.....	30.00

Miscellaneous.

Tapping, including pipe and curb work.....	8.00
Banks and offices, one basin.....	5.00
Bakeries each 300 barrels of flour or fraction....	5.00
Barber shops each chair....	3.00
Boilers, per meter, per 1,000 gallons.....	.50
Drug stores each prescription clerk.....	12.00
Offices and sleeping-rooms.....	5.00
Bars, each bartender.....	12.00
Sprinkling streets, per cart, per month....	20.00
Builders, each barrel of lime or cement.....	.05
Meter rates, per 1,000 gallons.....	.50
Elevators, freight, per annum.....	300.00
Elevators, passengers, per annum.....	500.00

5. Said water company further agrees to furnish, erect, and maintain for the use of the said city any number of additional fire-hydrants the city of Mobile may require during the continuance of

12 said contract at the same rate per hydrant as agreed upon for the said 260 hydrants, provided said water supply company shall not be required to lay more than 500 feet of pipe in order to place or erect any one additional hydrant.

6. The said water supply company hereby agrees to erect and furnish for the use of the said city of Mobile the full complement of hydrants (260) within 60 days from the date hereof.

In consideration of the above-recited premises and the undertakings and stipulations therein of the Bienville Water Supply Company, the city of Mobile hereby contracts with the said water supply company for the use of two hundred and sixty (260) double-nozzle fire-hydrants, and agrees to pay said water supply company for the use of said hydrants at the rate of \$50.00 a hydrant per annum, during the continuance of this contract. It is mutually agreed that said contract shall be for a period of six years, the payments to be made thereunder to be monthly on or before the 10th day of each month, the city reserving the right to withhold one month's full pay during the continuance and until the termination of this agreement. It is mutually agreed that this contract shall take effect as of the first day of July 1888, as to hydrants already erected and that the use of the additional hydrants of the full complement (260) to be erected, shall be paid for from the 1st day of each month after they are put down and ready for service.

It is further understood that the use of hydrants under private contract are not to be paid for by the city.

The city of Mobile further agrees in satisfaction and settlement of the claim of the Bienville Water Supply Company for water consumed previous to the 1st day of July 1888, to pay the sum of \$500.00 the same to be paid on the execution of this contract.

13 In case at any time the said Bienville Water Supply Company shall fail or refuse to comply with the terms of this contract according to its true intent and meaning as to any one or more things herein provided and agreed to be done and performed on its part and shall so remain in default for the space of ten days without any satisfactory reason upon its part, then it shall and may be lawful and proper on the part of the corporate authorities of the city of Mobile to declare this contract rescinded and wholly abandon the same upon giving notice thereof to the said Bienville Water Supply Company, always provided however, that the said corporate authorities of the city of Mobile, shall on their part have fully paid, performed and fulfilled all things and everything on their part which up to that period of time has been or may be required to be paid, performed, and fulfilled on the part of the said city to or towards the said Bienville Water Supply Company.

In testimony whereof, the Bienville Water Supply Company, has caused its president to sign his name hereto and has also caused its corporate seal to be attached, and the said city of Mobile has caused the mayor thereof to sign his name hereto, and has caused its cor-

porate seal to be hereto attached, both in duplicate, this 14th day of August, A. D. 1888.

THE BIENVILLE WATER SUPPLY
COMPANY,

By GEORGE A. KETCHUM, *President.*

THE CITY OF MOBILE,

By JOSEPH C. RICH, *Mayor.*

Attest: JNO. F. SUMMERSELL, *City Clerk.*

EXHIBIT "B."

This agreement made and entered into on this 14th day of April, in the year of our Lord, one thousand eight hundred and ninety-one, by and between the Bienville Water Supply Company, a corporation chartered by and existing under the laws of the State of Alabama, on the one part, and the city of Mobile, on the other part, and having for its object the extension and change of the contract heretofore entered into between said parties dated the 14th day of August, A. D. 1888, as hereinafter provided, witnesseth:

Third. That said Bienville Water Supply Company further agrees that said city shall have the unrestricted use of said hydrants for fire purposes as well as for the practice of firemen, and the free use of water for flushing the gutters of said city, and also any sewers that may be constructed, provided, however that the opening, closing, and use of said hydrants for flushing said gutters and sewers shall be under the direct supervision and direction of the chief of the fire department of said city, and provided, further, that not more than two hydrants shall be used at any one time for flushing, and then only during daylight, but that said hydrants are not to be used at any time during a fire; also the free use of water for all municipal buildings, for one fountain in Bienville square, one fountain in Washington square, and two fountains on Government street. These fountains on Government street and in Washington square are to have only three-sixteenth ($\frac{3}{16}$) inch jets. The water pipe from said supply company's main to the fountain in the Bienville square shall be one inch in diameter, and the pipes to the other fountains are not to be larger than three quarters ($\frac{3}{4}$) of an inch in diameter. The water for said fountains are only to be used during daylight, but is not to be used on rainy days.

Fourth. Said water supply company further agrees and binds itself to charge during the continuance of this contract, for domestic uses, a greater or higher rate for water than that now established, a schedule of which is herein incorporated and made a part of this agreement, to wit:

Private Families.

One service	\$10.00
Each additional faucet or sink	5.00
Bath-tub	5.00

Stationary wash-tub (each)	1.50
Butler's sink	2.00
Kitchen sink ..	5.00
Stationary wash-basins	1.00
Automatic pan water-closet.....	4.00
Hopper water-closet	6.00
Hose sprinkler for lawns and streets, nozzle not to exceed four-sixteenths ($\frac{1}{4}$) or one-quarter $\frac{1}{2}$ of an inch ...	10.00
Revolving lawn-sprinkler, one-sixteenth ($\frac{1}{16}$) inch opening, eight hours per day	10.00
Fountains, one-eighth ($\frac{1}{8}$) inch jet, six (6) hours each day for each month	1.00

Larger fountains, special rates.

Hot or cold water flowing into one vessel will be charged as one tap only.

Apartments and tenements-houses, each flat or suite of rooms charged as one dwelling.

Hotels and Boarding-houses.

Each faucet and sink	\$12.00
Each bed-room	1.00
Hopper water-closet	20.00
Bath-tub	12.00
Automatic pan water-closet.....	12.00
Automatic urinal	5.00

Private Stables.

Each horse, including washing vehicles by hand.....	3.00
Each cow	2.00
Stable hose.....	5.00

Livery, Public, and Boarding Stables.

16 Each stall.....	1.50
Hose for washing, one-eighth ($\frac{1}{8}$) nozzle.....	30.00

Miscellaneous.

Tapping, including pipe and curb work.....	8.00
Banks and offices, one basin.....	5.00
Bakeries, each three hundred (300) bbls. flour or fraction...	5.00
Barber shops, each chair.....	3.00
Boilers, per meter per 1,000 gallons....	.50
Drug stores each prescription clerk.....	12.00
Offices and sleeping-rooms.....	5.00
Bars, each bartender.....	12.00
Sprinkling streets per cart, per month.....	20.00
Builders each barrel of lime or cement.....	.05
Meter rates per 1,000 gallons.....	.50
Elevators, freight per annum.....	300.00
Elevators, passenger, per annum....	500.00

Sixth. In consideration of the above-recited premises and the undertakings and stipulations therein of the Bienville Water Supply Company, the city of Mobile hereby contracts with the said water supply company for the use of two hundred and sixty (260) double-nozzle fire-hydrants, and agrees to pay said water supply company for the use of said hydrants at the rate of fifty (\$50.00) dollars a hydrant, per annum during the continuance of this contract. It is mutually agreed that said contract shall be and extend for a period of twelve (12) years from the first day of July 1888, the payments to be made thereunder to be monthly on or before the 10th of the month, the city reserving the right to withhold one month's full pay during the continuance and until the termination of this agreement. It is further understood that the use of hydrants under private hydrants are not to be paid for by the city. In case at any time
17 the said Bienville Water Supply Company shall fail or refuse to comply with the terms of this contract, according to its true intent and meaning as to any one or more things herein provided, and agreed to be done and performed on its part and shall so remain in default for the space of ten (10) days without any satisfactory reason upon its part, then it shall and may be lawful and proper on the part of the corporate authorities of the city of Mobile to declare this contract rescinded and wholly to abandon the same upon giving notice thereof to the said Bienville Water Supply Company of its intent so to do always, provided, however, that the said corporate authorities of the city of Mobile, shall, on their part, have fully paid, performed and fulfilled all things and everything on their part which up to that period of time has been or may be required to be paid, performed or fulfilled on the part of the said city of Mobile to or towards the said Bienville Water Supply Company.

Seventh. It is agreed between the parties hereto that the provisions of sections one (1), two (2), and five (5) as contained in said original contract of August 15th, 1888, are to be in no manner to be affected by this instrument, except in so far that they are hereby continued in full force until the end of said contract as extended by this contract, but that sections three (3), four (4) and six as herein written are to be substituted therefor and are to be binding on said parties until the expiration of said contract as extended by this contract.

In testimony whereof the Bienville Water Supply Company has caused its president to sign his name hereto and also caused its corporate seal to be attached, and the said city of Mobile has caused the mayor thereof to sign his name hereto and has also caused its corporate seal to be hereto attached, both in duplicate, on the day and date first above written.

18

BIENVILLE WATER SUPPLY COMPANY,
By GEORGE A. KETCHUM, *President*.
THE CITY OF MOBILE,
By JOSEPH C. RICH, *Mayor*.

Attest: JNO. F. SUMMERSELL, *City Clerk*.

Subpoena in Equity.

UNITED STATES OF AMERICA :

Circuit Court of the United States for the Fifth Judicial Circuit and
Southern District of Alabama, at Mobile. In Equity.THE BIENVILLE WATER SUPPLY COMPANY, a Corporation }
Incorporated by the Legislature of the State of Ala-
bama, Complainant, }

vs.

THE CITY OF MOBILE, a Municipal Corporation Char- }
tered by the Legislature of the State of Alabama, and }
against John Curtis Bush, as Mayor of said City, De- }
fendants. }

No. 210.

The President of the United States of America to the City of Mo-
bile, a municipal corporation, and John Curtis Bush, as mayor
of said city, who are citizens of the district aforesaid and of the
State of Alabama, Greeting :You and each of you are hereby commanded and strictly enjoined
that, laying all other matters aside and notwithstanding any other
excuse, you and each of you personally be and appear before the
judge of the circuit court of the United States for the fifth judicial
circuit and southern district of Alabama, at Mobile, at the clerk's
office of the said court, in the city of Mobile, at rules to be had on
the first Monday of April, 1899 (being the 3rd day of said month)
next, to plead to, answer, or demur to a bill of complaint exhibited
against you in the said court by The Bienville Water Supply Com-
pany, a corporation incorporated by the legislature of the19 State of Alabama, who is a citizen of the State of Alabama,
and to do further and receive what the said court shall have
considered in that behalf, and this you are not to omit ; and have
there then this writ.To the marshal of the United States for the said district to exe-
cute.Witness the Honorable Melville W. Fuller, Chief Justice of the
Supreme Court of the United States, and the seal of the said circuit
court, at Mobile, this the 21st day of February, in the year of our
Lord one thousand eight hundred and ninety-nine.

Attest :

[SEAL.]

RICHARD JONES, *Clerk, &c.*NOTE.—The defendant- is required and hereby notified to enter
appearance in the above-entitled cause in the clerk's office of said
court, in the Custom-house building, in the city of Mobile, on or
before the rule day next ensuing, to wit, the first Monday of April,
1899, or the bill may be taken *pro confesso* against them.RICHARD JONES, *Clerk, &c.*

BESTOR AND GRAY AND

R. H. CLARKE,

Complainant's Solicitors.

Marshal's Return.

Received in office this 21st day of February, 1899, and executed by serving copy of the within subpoena on the City of Mobile by handing a copy of the same to R. B. Owen, Jr., clerk of the city of Mobile, and on J. C. Bush, mayor of the city of Mobile, by handing him a copy this 22nd day of February, A. D. 1899.

FRANK SIMMONS,

U. S. Marshal,

By C. D. HENDERSON, *Deputy.*

Returned and filed this February 22nd, A. D. 1899.

RICHARD JONES, *Clerk.*

Demurrer of Defendants to the Bill of Complaint.

In the Circuit Court of the United States for the Fifth Judicial Circuit, Southern District of Alabama.

20

THE BIENVILLE WATER SUPPLY COMPANY, Complainant,

vs.

THE CITY OF MOBILE and JOHN CURTIS BUSH, as Mayor of said City, Defendants. }

The demurrer of the defendants, by protestation, not confessing or acknowledging all or any one of the matters and things in said bill of complaint filed in this court against demurrants on Feb'y 21st, A. D. 1899, and numbered 210, to be true in such manner and form as the same are therein and thereby set forth and alleged. Said defendants come now and demur to said bill, and for causes or grounds of demurrer thereto specifically assign the following:

(1.) Because said bill, taken in connection with Exhibits "A" and "B," made a part thereof, shows that no contract was made between the city of Mobile and the Bienville Water Supply Company as to the rates to be charged the inhabitants of said city for water, but that said contract merely fixed a maximum rate that said water company was to charge the inhabitants of said city of Mobile.

(2.) Because said bill of complaint shows that said city of Mobile was specially authorized and empowered by its charter and by the act of the General Assembly of Alabama approved November 30th, 1898 (and of which said act this court will take judicial notice), to buy or to build, erect, and maintain, and to operate water works for the supply of its inhabitants with water, and for the extinguishment of fires, and for sanitary, domestic, and other purposes.

(3.) Because there is nothing shown or alleged in said bill of complaint and in said Exhibits "a" and "B," made a part thereof, which precludes or estops the city of Mobile from buying, building, erecting, maintaining, and operating a system of water works.

(4.) Because said Exhibits "A" and "B," made a part of said bill of complaint, show that the only obligation resting upon and binding upon said city of Mobile is that it shall pay to said Bienville Water Supply Company the sum of fifty dollars

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(\$50.00) each per annum, payments to be made monthly, for two hundred and sixty fire-hydrants placed on the streets of said city by said water supply company until the expiration of said contract on July 1st, A. D. 1900, and it is not alleged or charged in said bill of complaint that the city of Mobile has or intends to repudiate its obligation to pay for said two hundred and sixty fire-hydrants at the rate of fifty dollars each per annum, payments to be made monthly.

(5.) Because said bill of complaint shows that the complainant has slept upon its alleged rights and shows no excuse for its laches in not asserting them.

(6.) Because said bill of complaint shows that the complainant, by not asserting its alleged rights, has allowed the position of the parties to this bill to so change that equitable relief cannot be granted to complainant without doing injustice.

(7.) Because said bill of complaint shows that by not asserting its alleged rights, the intervening rights of Messrs. M. T. Lewman and Company, who contracted with the city of Mobile to build, and the, as the bill shows, are now actively building said water works, and of Messrs. Sperry, Jones and Company, of Baltimore, Maryland, who bought said water-works bonds from said city of Mobile, will be destroyed or seriously impaired.

(8.) Because said bill of complaint fails to allege any facts which show that the city of Mobile has or intends to do or commit any act which will impair the said contract between the city of Mobile and the Bienville Water Supply Company, and which said contract is made a part of the bill of complaint.

(9.) Because it is shown upon the face of said bill of complaint that the city of Mobile did not grant the complainant the franchise to lay its said water mains and pipes in the city of Mobile, but that it was done by the General Assembly of Alabama, and from which it appears that said city of Mobile had no lawful authority to grant or to enter into a contract with complainant, conferring thereby the exclusive right or privilege of supplying water to the inhabitants of said city of Mobile.

Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

B. B. BOONE,
City Attorney,
E. L. RUSSELL,
Solicitors for Def'ts.

STATE OF ALABAMA, {
County of Mobile. }

John Curtis Bush makes solemn oath and says that he is the mayor of the city of Mobile, the municipal corporation joined with him as defendant in the above and foregoing bill, and that the foregoing demurrer is not interposed for delay.

JOHN CURTIS BUSH,
As Mayor of the City of Mobile.

Sworn to and subscribed to before me this 23rd day of February, 1899.

FRANCIS O. HOFFMAN,
Notary Public in and for Mobile County, State of Alabama.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

B. B. BOONE,
City Attorney,
E. L. RUSSELL,
Solicitors for Defendants.

Filed February 23rd, 1899.

RICH- RD JONES, Clerk.

23 *Opinion of the Court on the Demurrer of the Defendants to the Bill of Complaint.*

Circuit Court of the United States for the Southern District of Alabama.

BIENVILLE WATER SUPPLY COMPANY	} No. 210. In Equity. May 22nd, 1899.
<i>versus</i> THE CITY OF MOBILE ET AL.	

Toulmin, District Judge :

This is a bill in equity filed by the complainant to enjoin the defendants from making or carrying out any contracts for supplying water to the inhabitants of the city of Mobile or for the construction of a system of water works for that purpose during the continuance of the contract made between the complainant and said city (which is set out and exhibited as a part of the bill), and to enjoin the defendants from proceeding to build or acquire a system of water works to be owned by said city to bring water into the city during the continuance of said contract.

The defendants have filed a demurrer to the bill, setting up various grounds of objection thereto, which it is unnecessary to specifically mention here.

The facts, as are shown by the averments of the bill, are substantially as follows: The complainant is a corporation chartered by the legislature of the State of Alabama for the purpose, among other things, of supplying water to the city of Mobile and its inhabitants. It was authorized to construct all needed canals, ditches, pipes, aqueducts, etc., as may be best suited for the purpose, and was "charged with the duty of introducing into the city such supply of pure water as the domestic, sanitary, and municipal wants may require." In the execution of this purpose the complainant laid mains and pipes in the streets of the city and established hydrants and fire-plugs therein, and built a reservoir, and erected pumps connecting with such mains and pipes at large expense to itself. Said property is now in use by the complainant for the purpose of supplying said city and inhabitants with water, which it is now

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doing. The city of Mobile is a municipal corporation, chartered by the legislature of the State.

On the 15th day of August, 1888, the complainant entered into a contract with said city, by which it agreed and contracted to furnish for the use of the city 260 fire-hydrants and to furnish water for fire service of a certain number of streams and pressure, and further agreed that the city should have the unrestricted use of said hydrants for such fire purposes and the free use of water for all municipal buildings. The complainant further agreed not to charge during the continuance of the contract for domestic use a greater or higher rate for water than that named or specified in the contract. In consideration of the undertakings and stipulations of the complainant as recited in the contract, the city agreed to pay to the complainant for the use of said hydrants at the rate of \$50.00 a hydrant per annum during the continuance of the contract. It was mutually agreed that the contract should be for six years; the payments to be monthly. On the 14th day of April, 1891, the contract was extended for a period of 12 years from the first day of July, 1888, to wit, to the 1st day of July, 1900, and is now in full force and effect.

The bill avers that the complainant has complied with all of the obligations and requirements of the contract on its part, is still doing so, and is ready and willing to continue so to do.

25 It avers that the defendant has violated and is proceeding to further violate its said contract with the complainant in that on the 14th day of May, 1898, it had bought and taken possession of a water-works plant, and is now operating the same, selling water to customers and cutting rates below those fixed in said contract, and actually competing in the business of selling and furnishing water to its inhabitants, and has taken away some of complainant's water customers, thereby decreasing the latter's income. It is further averred in the bill that said defendant is building another system of water works to supply itself and its inhabitants with water before the expiration of said contract, and that it claims the right so to do under the provisions of its charter and an act of the legislature of the State approved November 30th, 1898. The charter provides that the city has the right to contract for, build, purchase, or otherwise acquire public works subject to the approval of a majority vote of the citizens of Mobile at a special election called therefor. In July, 1897, an election was held and a majority of the votes cast were in favor of the city contracting for, building, or otherwise acquiring a system of water works to be owned and operated by the city, and the issuing of bonds of the city to pay for the same. The act of November 30th, 1898, authorized the issuing of bonds for the purpose. It is further averred that acting under and by virtue of the authority and power granted by its charter and the said act of November 30th, 1898, the city of Mobile entered into a contract to have a system of water works built, and the building of the same is now going on, and that it made a contract with certain persons to take said bonds, and that such persons have already taken and paid for a part of them.

The complainant contends that while it is under contractual relations with the defendant, as shown by the contract exhibited to the bill, the defendant has no legal right to impair the value of its plant, and to destroy or diminish its income therefrom, which complainant claims would be the effect of defendant's action in building water works and furnishing water to its inhabitants. It is averred that the defendant is insolvent, and that the only way the complainant can protect itself is by the interposition of a court of equity.

It will be observed that there is no claim by the complainant that it has been granted an exclusive franchise to furnish water to the defendant and its inhabitants, but that the contention is that under the contract between the parties and as exhibited as a part of the bill the defendant has no right to furnish water to other persons or to build or acquire a system of water works to supply water to itself and its inhabitants during the continuance of the contract, and that to do so is a violation of it.

The equity of this claims depends, in my judgment, upon two inquiries—first, whether the defendant contracted with the complainant to furnish water to the inhabitants of the city of Mobile or gave it the right to do so during the continuance of the contract, and, second, whether the defendant covenanted with the complainant not to build or acquire water works of its own during the continuance of said contract.

The city of Mobile granted to complainant no rights or privileges whatever. The legislature of the State granted it the right to build water works and to use the streets of the city of Mobile for laying pipes, mains, etc., for water purposes, and, among other things, authorized it and the city of Mobile to contract together for supplying said city with water. They made a contract, but there is no provision in it for furnishing the inhabitants of Mobile with water—no stipulation on the part of the complainant to do so—but it is clear that the parties contemplated that the complainant would contract with the inhabitants of the city to supply them with water for domestic purposes, for it is stipulated in the contract that the complainant shall not charge for water supplied for domestic purposes higher rates than those specified therein. It did not fix rates to be charged the inhabitants of the city for water, but stipulated only for a maximum rate to be charged.

The defendant was authorized and empowered by its charter and the act of the legislature of November 30th, 1898, to build or otherwise acquire water works of its own for the supply of water to itself and its inhabitants for the extinguishment of fires and for sanitary, domestic, and other purposes, and the defendant in its contract with the complainant made no covenant not to do so. It agreed to pay to the complainant, at the rate of \$50.00 a hydrant per year, for a given number of hydrants erected and supplied by the complainant, and to make the payments monthly. As long as it complies with this obligation it meets all the requirements of the contract on its part. There is no averment that the defendant has by act or word repudiated this obligation. There is no averment

that it has failed or refused to make the payments stipulated for, or that it intends to do so. If the defendant were to refuse or fail to receive or use the water furnished or offered to be furnished by the complainant, as required by the contract, it would still be bound by the contract, and until its expiration to make the payments stipulated therein. *Furgus Falls Water Company vs. The City of Furgus Falls*, 65 Federal Reporter, 586.

The counsel for the complainant has cited several authorities to sustain the contention that the defendant having made a contract with the complainant which does not expire until July 1st, 1900, cannot violate it without liability, and, in view of the circumstances of the case, should now be enjoined from violating it. The principal of law involved in the proposition is readily conceded, but the answer to the contention is that there are no facts averred in the bill showing that the defendant has violated, is violating, or intends to violate the contract it made with the complainant. A careful examination of the cases cited, I think, will show their inapplicability to this case. None of the contracts considered in those cases were like the one here.

The case of *White vs. The City of Meadville*, 35 Atlantic Reporter, 695, was a case where the city was granted by the State the exclusive right to supply itself and others with water or to make contracts with and authorize any person or company to erect a water plant and give it the exclusive right to furnish water to the city and its inhabitants for a given period. There were two distinct methods by which the city could supply itself with water. The court held "that the city, having adopted one method, excluded its right to exercise any further power in the premises. There was no grant of power to put both methods in operation at the same time. Once the power had been exercised to supply the city by contract through another creature of the same sovereign, then the municipal function had passed from the city and must be performed by the other contracting party. The city having exercised its authority and adopted the secondary method, and made a bargain, it must stand by the bargain."

The case of *Furgus Falls Water Company vs. City of Furgus Falls*, *supra*, was a suit at law brought to recover a sum of money on account of rent for water supplied to the defendant under a certain contract. The city contracted with the water company, giving it the exclusive privilege of laying water mains in the city for thirty years. The contract provided that the company should furnish the city with a certain number of hydrants for a stated price per year, and stipulated that at the end of ten years the city might, at its option, buy the water works. The contract also provided that the city would during the period named abstain from granting to any other party the right or privilege to lay pipes or to furnish water to the city or its inhabitants, and to abstain from doing so for or on its own behalf. Some three months before the expiration of the ten years the city council passed a resolution declaring the contract null and void and cancelled, and determined that the city would no longer take water from the water company

under that contract, but undertook *ex parte* to make another contract. The water company refused to accept the last contract proposed or to recognize it. All the rents were paid up to the last quarter under the original contract, and this suit was brought to recover for that quarter. The city resisted payment of rent on the ground that the contract was illegal, unreasonable, oppressive, and contrary to public policy, and that the city council had no authority to make it. The only question in the case, as stated by the judge who decided it, was "whether the contract was so unreasonable, so oppressive, so contrary to public policy, that the law will interfere and declare it void." He said, "I am of the opinion that if the question had been raised at the outset it is doubtful whether the city council had the authority to give an exclusive contract of this character to any person for the purpose stated." He further said, "I do not consider that the contract is so unreasonable, oppressive, or contrary to public policy as to be void," and held that the plaintiff was entitled to recover the full amount claimed for rent.

In the case of *The Atlantic Water Works Company vs. Atlantic City*, 39 New Jersey Equity, 367, the water company contracted with the city for the purpose of supplying the city with
30 water and accepted the provisions of an ordinance regulating the mode of supplying the water both for public and private use, and was granted the exclusive privilege of furnishing water to the city and its inhabitants. The city covenanted that it would not grant to any other person the right to lay pipes and furnish or supply water to the city and its inhabitants. The company constructed its works at large expense and supplied the water as required by the contract. The city subsequently undertook to grant this right to other persons. A bill was filed to enjoin it. The city set up that its contract with the complainant was *ultra vires* and void. The court held that whether or not the city's grant of the exclusive privilege of furnishing water was *ultra vires* and void, the city had exhausted its power as to providing a water supply; that the complainant's franchise was exclusive, and that the court would protect it against any invasion of its rights by persons laying pipes under the city's authority to compete with it. The court said that the city had already executed its power in the premises, and had secured the water company by contract against competition. An injunction was granted.

The case of *The City of Walla Walla vs. The Walla Walla Water Company*, 172 United States, page 1, was a bill in equity filed by the water company to enjoin the city of Walla Walla from erecting water — in pursuance of an ordinance of the city to that effect. The city was authorized by its charter to grant the right to use the streets of the city for the purpose of laying pipes intended to furnish the inhabitants of said city with water to any persons or association of persons for a term of not exceeding twenty-five years; and it was further provided that the city shall have power to erect and maintain water works within or without the city limits or to authorize the

erection of the same for the purpose of furnishing the city or its inhabitants with a sufficient supply of water. An ordinance was passed by the city council and accepted by the water company granting to such company "for a term of twenty-five years the right to lay mains and pipes in all the streets of the city for the purpose of furnishing the inhabitants thereof with water," and entering into a contract with the company for the same term by which the city agreed to pay certain rentals, and bound itself not to erect, maintain, or become interested in water works unless the contract should be avoided by the judgment of a court of competent jurisdiction on the ground of a substantial failure of performance by the company. The language of the contract is that "until such contract shall have been so avoided the city of Walla Walla shall not erect, maintain, or become interested in any water works." The water company substantially complied with the terms and conditions of the contract, which was still in force at the time the bill was filed. After this contract had been in force and the stipulated rentals paid for about six years an ordinance was passed to provide for the construction of a system of water works for the purpose of supplying the city and its inhabitants with water and the issue of bonds to provide the necessary funds. The supreme court said in substance that the contract amounts to this: If the city should desire to establish water works of its own, it would do so by condemning the property of the company and making such changes in its plant or such additions thereto as it might deem desirable, but that it would not enter into a direct competition with the company during the life of the contract; that so long as the contract had not been avoided by a court of competent jurisdiction, as provided in the contract, but remained in force, the city had no right to establish water works because it had so covenanted with the water company; and the injunction was sustained.

Thus we have seen that the contract in every case to which our attention has been called either provided for an exclusive right in the water company to supply water to the city and its inhabitants, granted or contracted for by the city, or contained in a covenant by the city that it would not erect water works of its own, and would abstain from granting the right to do so to a competing company during the life of the contract.

And we have seen that the contract under consideration in this case contains no such provisions. We have seen that it does not attempt to grant any exclusive right to the complainant; that it contains no stipulation or agreement that the complainant shall furnish water to the inhabitants of the city of Mobile, and no covenant by the city that it will not build or acquire water works of its own, or abstain from supplying water to its inhabitants during the continuance of the contract. The parties might have made such a contract, but they did not do so.

From the views already expressed herein, and which must dispose of this case here, it is unnecessary to decide or discuss the question of the laches raised by the defendant in the 5th, 6th, and 7th grounds of demurrer.

My conclusion, then, is that the complainant has shown no valid or legal grounds on which to grant it the injunction prayed for in the bill.

My opinion, therefore, is that the demurrer on the 1st, 2nd, 3rd, 4th, 8th, and 9th grounds assigned is well taken, and that it should be sustained, and it is so ordered.

Filed May 22nd, 1899.

RICHARD JONES, *Clerk*.

33 *Decree of the Court Sustaining the Demurrer of the Defendants to the Bill of Complaint.*

Circuit Court of the United States for the Southern District of Alabama.

THE BIENVILLE WATER SUPPLY COMPANY	} No. 210. In Equity. Decree on Demurrers.
<i>versus</i> THE CITY OF MOBILE ET AL.	

This cause coming on to be heard on the demurrer filed by the defendants to the bill of complaint, and the same having been submitted for decree thereon and having been duly considered by the court, it is now ordered, adjudged, and decreed by the court that grounds 1, 2, 3, 4, 8, and 9 of said demurrer be, and the same are hereby, sustained.

It is further ordered that the complainant be, and it is hereby, allowed fifteen (15) days from the date hereof within which to amend its bill as it may be advised.

Made in open court this May 22nd, A. D. 1899.

HARRY T. TOULMIN, *Judge*.

Filed May 22, 1899, and entered on minutes, page 712.

RICH'D JONES, *Clerk*.

Motion by the Defendants to Dismiss the Bill of Complaint.

Circuit Court of the United States, Southern Dist. of Alabama.

THE BIENVILLE WATER SUPPLY COMPANY	} No. 210. In Equity.
<i>versus</i> THE CITY OF MOBILE ET AL.	

Comes the respondent The City of Mobile and moves the court to enter a decree dismissing the bill of complaint in this cause, the said complainant not having amended its said bill within 15 days from May 22nd, 1899, in accordance with the order

34 heretofore made in this cause on said date.

B. B. BOONE AND

E. L. RUSSELL,

Solicitors for Respondents.

Filed June 7th, 1899, and entered on the motion docket, page 494

RICHARD JONES, *Clerk.*

June 7th, 1899.—Received this day at 12 o'clock copy of the above motion.

D. P. BESTOR,
Solicitor for Complainant.

Order of Court Dismissing the Bill of Complaint.

Circuit Court of the United States, Southern Dist. of Alabama.

FRIDAY MORNING, June 9th, A. D. 1899.

Present: Honl. Harry T. Toulmin, judge presiding.

Minutes, page 716.

BIENVILLE WATER SUPPLY COMPANY	} No. 210. In Equity.
<i>versus</i>	
CITY OF MOBILE ET AL.	

This cause coming on to be heard upon the defendants' motion to dismiss the bill of complaint, and being duly considered by the court, it is hereby ordered that said motion be granted and that said bill of complaint be, and the same is hereby, dismissed out of court at complainant's costs.

Filed June 9th, 1899. Entered minutes, page 716.

RICHARD JONES, *Clerk.*

Assignment of Error on Appeal of the Bienville Water Supply Company.

In the Circuit Court of the United States, Southern District of Alabama.

BIENVILLE WATER SUPPLY COMPANY, a Corporation,	}
<i>vs.</i>	
THE CITY OF MOBILE.	

35 Now comes The Bienville Water Supply Company, the appellant, and assigns as errors in the decrees of the United States circuit court for the southern district of Alabama, rendered in this cause on the 22nd day of May, 1899, and on the 9th day of June, 1899, the following:

First. The court erred in sustaining defendant's demurrer numbered one.

Second. The court erred in sustaining defendant's demurrer numbered two.

Third. The court erred in sustaining the defendant's demurrer numbered three.

Fourth. The court erred in sustaining defendant's demurrer numbered four.

Fifth. The court erred in sustaining defendant's demurrer numbered eight.

Sixth. The court erred in sustaining defendant's demurrer numbered nine.

Seventh. The court erred in its decree sustaining defendant's motion to dismiss complainant's bill.

Eighth. The court erred in its order and decree dismissing complainant's bill out of court.

BESTOR AND GRAY AND
RICHARD H. CLARKE,
*Solicitors for The Bienville Water Supply
Company, the Appellant.*

Filed July 12th, 1899.

RICHARD JONES, *Clerk.*

*Petition of the Bienville Water Supply Company for an Appeal to the
Supreme Court of the United States.*

In the United States Circuit Court for the Southern District of
Alabama.

BIENVILLE WATER SUPPLY COMPANY	}	No. 210. In Equity.
<i>versus</i>		
THE CITY OF MOBILE.		

36 Petition of complainant to have former order allowing appeal
to the circuit court of appeals set aside, and for an order
allowing an appeal in the above cause directly to the Supreme
Court of the United States.

Comes The Bienville Water Supply Company, a corporation, the complainant in the above-stated cause, by its solicitors, and moves the court for leave to withdraw the *petition* heretofore filed by it therein to be allowed an appeal to the honorable United States circuit court of appeals for the fifth judicial circuit, and that the order of the court granting such appeal be set aside, upon the ground that such appeal should be taken directly to the honorable Supreme Court of the United States; and said complainant, feeling itself aggrieved by the decretal order made by the court on the 22nd day of May, 1899, sustaining defendants' demurrer, and the decree of dismissal made on the 9th day of June, 1899, in pursuance of said order, whereby it adjudged and decreed that the grounds of demurrer of the defendants to complainant's bill numbered one, two, three, four, eight, and nine should be sustained, and that complainant's bill filed in said cause should be dismissed with costs to said complainant, now comes by its solicitors of record and petitions this honorable United States circuit court for the southern district of Alabama for an order allowing said complainant to prosecute an appeal from said final decree of June 9th, 1899, as well as from the decretal order of May 22, 1899, sustaining said demurrers, directly to the honorable

Supreme Court of the United States under and according to the laws of Congress and the statutes of the United States in such cases made and provided, and that also that an order be made fixing the amount of security for costs which complainant shall give and
 37 furnish upon such appeal, and that upon the giving of such security all further proceedings in this court may be suspended until the determination of said appeal by the Supreme Court of the United States.

Your petitioner, the complainant in this cause, herewith files with this petition assignments of error in this cause.

And, as in duty bound, your petitioner will ever pray, &c.

BESTOR AND GRAY AND

R. H. CLARKE,

Solicitors for the Bienville Water Supply Company.

Filed July 12th, 1899.

RICHARD JONES, *Clerk.*

Decree setting aside former order granting appeal to circuit court of appeals and allowing complainant to withdraw petition praying said appeal and allowing an appeal to the Supreme Court of the United States and fixing appeal bond, &c.

In the United States Circuit Court, Southern District of Alabama.

THE BIENVILLE WATER SUPPLY COMPANY, }

Complainant,

versus

THE CITY OF MOBILE ET AL., Defendants. }

No. 210. In Equity.

This cause coming on to be heard in open court on the petition of complainant for leave to withdraw the petition heretofore filed by it to be allowed an appeal to the circuit court of appeals for the fifth circuit, and that the order of the court granting such appeal be set aside, and that complainant be allowed to prosecute an appeal directly to the honorable Supreme Court of the United States from the decrees rendered in said cause by this court on the 22nd day of May, 1899, and on the 9th day of June, 1899, respectively, it is considered and ordered by the court that said petition be granted and that said former order of this court allowing the complainant an appeal in this cause to the United States circuit court of
 38 appeals for the fifth judicial circuit be and the same is set aside.

And it is ordered by the court that said complainant be, and it is hereby, allowed an appeal in said cause directly to the Supreme Court of the United States, as prayed for in its said petition, upon its giving bond for the costs of such appeal in the sum of five hundred dollars.

HARRY T. TOULMIN, *Judge.*

July 12th, 1899.

Filed July 12th, 1899. Minutes, page 723.

RICHARD JONES, *Clerk.*

Appeal Bond to the Supreme Court of the United States in the Sum of \$500.00.

In the United States Circuit Court for the Southern District of Alabama.

THE BIENVILLE WATER SUPPLY COMPANY,	} No. 210. In Equity.
Complainant,	
<i>versus</i>	
THE CITY OF MOBILE, Defendant.	

Know all men by these presents that we, The Bienville Water Supply Company, a corporation chartered by the State of Alabama and the complainant in the above-stated cause, as principal, and The Fidelity and Deposit Company of Maryland, of the State of Maryland, as surety, are held and firmly bound unto the said City of Mobile, a municipal corporation of said State, in the sum of five hundred dollars (500.00); for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of July, 1899.

The condition of the above obligation is such that whereas
39 lately, at a session of the circuit court of the United States for the southern district of Alabama, in a suit pending in said court upon the equity side thereof between said Bienville Water Supply Company, as complainant, and said City of Mobile, as defendant, certain decrees were rendered against the said complainant by said court sustaining demurrers to its bill of complaint exhibited in said cause and dismissing said bill out of said court; and whereas said Bienville Water Supply Company has obtained from said court an order allowing an appeal to the Supreme Court of the United States from the aforementioned decrees rendered in said cause:

Now, if the said Bienville Water Supply Company shall prosecute its said appeal to effect and shall answer all costs that may be awarded against it if it shall fail to make its said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

THE BIENVILLE WATER SUPPLY
COMPANY,

By GEORGE A. KETCHUM,

President. [SEAL.]

THE FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND, BALTIMORE,
MD.,

By HERMAN W. LEINKAUF,

[SEAL.]
Attorney-in-fact.

D. P. COLEMAN & CO.,

Local Agents Fidelity and Deposit Company of Maryland.

[United States documentary stamps.]

Approved:

HARRY T. TOULMIN,

U. S. Judge.

Filed July 13th, 1899.

RICHARD JONES, *Clerk.*

40 THE UNITED STATES OF AMERICA, } ss:
Fifth Judicial Circuit,

The President of the United States to the City of Mobile, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the city of Washington, within thirty (30) days from the date hereof, pursuant to an appeal allowed by the circuit court of the United States for the southern district of Alabama, fifth judicial circuit, wherein The Bienville Water Supply Company is appellant and the said City of Mobile is appellee, to show cause, if any there be, why the decrees in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 17th day of July, A. D. 1899.

HARRY T. TOULMIN,
United States Judge.

I hereby, on this 17th day of July, A. D. 1899, accept due personal service of the above citation of appeal on behalf of said City of Mobile, appellee.

B. B. BOONE,
Solicitor for the Appellee.

Filed this the 17th day of July, A. D. 1899.

RICH'D JONES,
*Clerk U. S. Circuit Court for the
 Southern District of Alabama.*

41 *Costs Taxed in the Cause.*

Costs of circuit court United States.....	\$61.25
Cost of transcript on appeal to Supreme Court.....	18.75

Total costs and same paid by Bienville Water Supply Company.....	\$80.00
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Certificate of Clerk to Transcript.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Southern District of Alabama, Fifth Judicial Circuit, at Mobile, Alabama.

I, Richard Jones, clerk of said court, do hereby certify that the foregoing thirty-nine (39) typewritten pages, numbered 1 to 39, both inclusive, contain a true copy of the record, assignment of errors, and of all the proceedings had in this court in the cause therein stated, to wit, No. 210, in equity, The Bienville Water Supply Company, complainant, and The City of Mobile *et al.*, defendants, as

fully as the same remains on file and of record in my office as clerk of said court, and that page number forty (40) of this transcript is the original citation of appeal issued in said cause pursuant to an appeal allowed therein by this court.

Witness my hand and the seal of said circuit court of the United States for the southern district of Alabama, affixed at the city of Mobile, this the 26th day of July, A. D. 1899.

[Seal United States Circuit Court, Southern Dist. of Ala.]

RICH'D JONES,

*Clerk U. S. Circuit Court for the
Southern District of Alabama.*

Endorsed on cover: File No., 17,482. S. Alabama C. C. U. S. Term No., 368. The Bienville Water Supply Company, appellant, vs. The City of Mobile. Filed August 5, 1899.